

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

CHARLES MATHEWS and	X	
CHRISTINE MATHEWS	X	
	X	CIVIL NO. 1:15-CV-424
VS.	X	
	X	
UNITED STATES OF AMERICA	X	JURY DEMAND

**PLAINTIFFS' ORIGINAL COMPLAINT**

NOW COME, **CHARLES MATHEWS and CHRISTINE MATHEWS**, hereinafter referred to as Plaintiffs, complaining of the UNITED STATES OF AMERICA, herein referred to as Defendant and for cause of action and would show the following:

I.

**PARTIES, JURISDICTION AND VENUE**

1.1. This is a medical malpractice case.

1.2. Plaintiffs **CHARLES MATHEWS and CHRISTINE MATHEWS** live at 705 Baker Lane, Waco, TX 76708 within the jurisdiction of this Court.

1.3. Defendant United States of America may be served with process in accordance with Rule 4(i) of the Federal Rules of Civil Procedure by serving a copy of the Summons and Complaint on Michele Carroll-Dublin, Civil Process Clerk, United States Attorne's Office, 601 NW Loop 410, Suite 600, San Antonio, Texas, and by serving a copy of the Summons and Complaint on Loretta E. Lynch, Attorney General of the United States of America, by certified mail, return receipt requested, at the Attorney General's Office, 10<sup>th</sup> and Constitution Avenue, N.W., Washington, D.C. 20530, to the attention of the Civil Process Clerk.

1.4. This action against the United States of America arises under the Federal Tort Claims Act and this Court has jurisdiction pursuant to 28 U.S.C. §§ 1346(b) and 1347.

1.5. Venue is proper in this District because part of the cause of action accrued and continues to accrue in this District. The Austin Division is convenient venue for this case.

1.6. Plaintiffs hereby plead that at all times relevant to this lawsuit that all physicians and nurses attending to Charles Mathews were employees of the United States of America and for purposes of and subject to the scope, coverages, and protections of the Federal Tort Claims Act afforded governmental employee health care providers.

## II. **FACTS**

2.1 On May 23, 2013 Charles Mathews was seen in Central Texas Health Systems of the VA for urinary tract dysfunctions. During an operative procedure urologist Dr. Wang injured the left ureter in two places both near the kidney and distal to the kidney.

2.2 Dr. Wang needed stent to be placed inside the ureter that would run from the kidney to the interior of the bladder. This stent would allow the ureter to heal and repair itself.

2.3 Unfortunately this operating room staff had not stocked the room with the appropriate sized stent.

2.4 The Olin Teague VA System, despite having a responsibility to provide and purchase needed medical equipment did not have an appropriate sized stent on their campus. In fact, the nearest size was far too long indicating that even stents of a closer size to the one actually required were unavailable.

2.5 The urologist at that point attempted to modify a much larger stent. Unfortunately this failed.

2.6 Ultimately, Mr. Mathews underwent surgical removal of his kidney.

### III.

#### **CAUSES OF ACTION AGAINST THE UNITED STATES OF AMERICA**

3.1 Plaintiffs contend that agents and/or employees of the United States of America were negligence in failing to:

- a. Fulfill the mission of the VA and appropriately use the budget of the Olin Teague Medical Center to acquire needed surgical supplies.
- b. Improper sizing of a ureter stent

### IV. **DAMAGES**

4.1 Damages to CHARLES MATHEWS as a result of these negligence he has had repeated surgical interventions and ultimate surgical removal of the kidney.

4.2 As a result of the negligence alleged herein, Plaintiff **CHRISTINE MATHEWS** has incurred those damages allowable at law including loss of consortium and loss of household services and support in the past and future.

4.3 Because the injuries and resulting damages of which complaint is made were proximately caused by the negligence of the employees of The United States of America, while acting in the scope of their office of employment under circumstances where The United States, if a private person, would be liable to the Plaintiffs in the same manner and to the same extent as an individual, The United States is financially responsible and liable for the damages to the Plaintiffs alleged herein.

V.  
**PRAYER**

**WHEREFORE, PREMISES CONSIDERED**, Plaintiffs pray for a Jury trial and that on final hearing hereof, Plaintiffs have judgment against Defendant, for whatever sums of money they may show themselves justly entitled, together with prejudgment and post judgment interest as provided by law, for interest on the judgment at the highest legal rate, for exemplary damages, for costs of suit, and for such other and further relief to which Plaintiffs may show themselves justly entitled, either at law or in equity.

Respectfully submitted,

**WINCKLER & HARVEY, L.L.P.**  
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By: /s/Reed Teckenbrock  
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**ATTORNEYS FOR PLAINTIFFS**  
Dated: 05/19/2015